

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED
NOV 30 2007
S. J. CLERK

UNITED STATES OF AMERICA,

* CR 05-30006 (01)

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Plaintiff,

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* ORDER AND OPINION

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STUART DION,

Defendant.

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The government filed a petition to revoke supervised release (Doc. 31). Magistrate Judge Moreno conducted a hearing, listened to the witnesses, examined the documents, and issued a report and recommendation and order of detention (Doc. 50). The magistrate, having heard the evidence and seen the witnesses, would be able to judge credibility.

The defendant has filed objections (Doc. 51).

I have conducted a *de novo* review of the entire matter. I have read the transcript of the preliminary hearing and detention hearing held on October 19, 2007. I have read the transcript (Doc. 52, court only) of the revocation hearing conducted on October 26, 2007. I have read all exhibits. I have reviewed in camera the "customized probation case history" as to this defendant and find nothing of any assistance to the defendant. The magistrate was correct in his analysis of this matter. I have considered all the objections of the defendant and find them to be without merit. I agree fully with all findings and conclusions of the magistrate. I find that, by a preponderance of the evidence, the defendant did commit all three of the violations alleged in the petition to revoke. The magistrate committed no evidentiary error. The evidence submitted to the magistrate was sufficiently reliable. This includes the hearsay evidence which was entirely reliable. The fact that the defendant's significant other failed to appear after having been subpoenaed to appear is of no significance. She also failed to appear in the state court action, thus allowing the defendant to escape prosecution. It is an altogether too common occurrence for battered spouses or companions to withdraw allegations of assault. In addition, upon the witness failing to appear, counsel for the government requested a continuance to obtain her testimony and the defendant objected to any continuance. The defendant and his attorney seek to "have their cake and eat it too." This is not to be permitted.

Any one of the allegations and the findings are sufficient to revoke supervised release in this case. I am very familiar with this defendant. He has been a constant problem in the community since age nine. His behavior while on supervised release is entirely consistent with his previous history. As a juvenile, he was convicted of assault with a dangerous weapon. He was given a term of probation but violated the terms of

probation because of assaultive behavior. On April 16, 2001, his probation was revoked and he was sentenced to a term of custody until his 21st birthday (27 months) with no supervision to follow. He was released from custody on April 24, 2003. On October 3, 2005, he was sentenced to a term of custody of 30 months upon his conviction of the sexual abuse of a minor. He admitted to having been involved also in a robbery and an assault. He has been a danger to the community since he was released from custody.

The report and recommendation of the magistrate should be adopted. The defendant's supervised release should be revoked. A supplemental presentence report should be prepared and we will set this matter for a dispositional hearing.

Now, therefore,

IT IS ORDERED, as follows:

- (1) The petition to revoke supervised release (Doc. 31) is granted and the defendant's supervised release is revoked.
- (2) The report and recommendation (Doc. 50) is adopted.
- (3) The objections of the defendant (Doc. 51) are overruled.
- (4) A supplemental presentence report shall be prepared and this matter will be set down for a dispositional hearing.

Dated this 30th day of November, 2007.

BY THE COURT:


CHARLES B. KORNMANN
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: 

DEPUTY

(SEAL)